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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120118050-2049-01]

RIN 0648-BB49

Marine Recreational Fisheries of the United States; National Saltwater Angler Registry and State Exemption Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations that implement section 401(g) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The amendments would eliminate duplicative permitting and registration requirements for holders of Main Hawaiian Islands Non-commercial Bottomfish Permits; allow states that exempt minors under the age of 17 from the state license or registration requirements to be eligible for Exempted State designation; allow the U.S. Virgin Islands to be designated as an Exempted State under the qualifying regional survey option of the rule; and clarify and update various provisions of the rule.

DATES: Comments must be received by [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2007-0815, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2007-0815 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to Ned Cyr, Director, Office of Science and Technology, NMFS, 1315 East West Highway, Silver Spring, MD 20910, Attn: Gordon Colvin.
- Fax: 301-713-1875; Attn: Gordon Colvin

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to

the NMFS Office of Science and Technology at the address above, and by e-mail to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Gordon Colvin, phone: 301-427-8118; fax: 301-713-1875; or e-mail: gordon.colvin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at <http://www.gpoaccess.gov/index.html>. Background information and documents are available at the NMFS Office of Science and Technology Web site at <http://www.countmyfish.noaa.gov/index.html>.

Background

The proposed action is to amend regulations at 50 CFR 600.1400 that implement the National Saltwater Angler Registry and State Exemption Program (NSAR). The rule established the requirements and procedures for anglers, spear fishers and for-hire fishing vessels to register with NMFS unless exempt from the registration requirement. The NSAR regulations also established the requirements and procedures whereby states may be designated as Exempted States. The anglers and for-hire fishing vessels licensed or registered by Exempted States, and those anglers and vessels that are not required to be licensed or registered under the laws of such states, are not required to register with NMFS.

Based on its experience with administering NSAR and input from states, NMFS has determined that minor revisions to the final rule are needed to clarify and update certain provisions in order to address the following objectives: 1) eliminate duplicative permitting

and registration requirements for holders of Main Hawaiian Islands Non-commercial Bottomfish Permits; 2) allow states that exempt minors under the age of 17 from the state license or registration requirements to be eligible for Exempted State designation; 3) allow the U.S. Virgin Islands to be designated as an Exempted State under the qualifying regional survey option of the rule; and 4) clarify and update various provisions of the rule.

A summary of the proposed changes and supporting statements follows:

Objective 1: Amend § 600.1405(b)(8) to provide that holders of Main Hawaiian Islands (MHI) Non-commercial Bottomfish Permits do not need to register under NSAR. The NMFS permit database already includes holders of MHI non-commercial bottomfish permits. This permit data can be added to the registry database without requiring the bottomfish permit holders to also register under NSAR. This would eliminate duplicative registration and fee payment by the approximately 50 holders of MHI Non-commercial bottom fish permits.

Objective 2: Amend § 600.1416(b)(1) to allow a state to be eligible for Exempted State designation even if its licensing program excludes anglers under age 17. During development of the original rule for NSAR, NMFS determined that it is not necessary to require that minors be included in the lists of persons that must be registered. This is because surveys that sample from angler registry lists will contact the households of registrants and can request information regarding the fishing activity of minors residing in the same households. All states have exceptions to state license or registration requirements for minors, and the final rule provides that these exceptions do not disqualify the states from being designated as Exempted States due to the exclusion of minors. At the time the final rule was adopted, NMFS thought that specifying that an Exempted State may have a state

license/registry exception for minors under age 16 would cover all of the states' exceptions. However, one state, Texas, excludes anglers under 17 years of age from its state licensing requirement. For the same reason that NMFS previously determined that state exceptions for minors under age 16 should not disqualify states from Exempted State designation, NMFS is proposing a state license exception for anglers under age 17 in the exceptions that are acceptable for Exempted State designation.

In addition, the proposed rule would allow a state to be eligible for Exempted State designation even if it allows new anglers to fish for a day (a "free fishing day") without a license. Many states engage in fishing promotion programs that are intended to recruit new anglers and license buyers. Exclusion from the registry of the limited number of participants that fish only that one time and do not continue to fish or purchase a license is not likely to adversely affect the quality and usefulness of the registry database.

Objective 3: Amend § 600.1417(b) to separate the U. S. Virgin Islands (USVI) and Puerto Rico into separate regions for purposes of submission of regional surveys of recreational fishing catch. Section 600.1417 states that, to be designated as an Exempted State, a state may submit to NMFS a proposal describing the state's participation in a qualifying regional survey. The regulations currently provide that Puerto Rico and USVI are one region. The fisheries in USVI and Puerto Rico are different and utilize separate stocks. Due to the differences in the fisheries, and in differing cultural and logistical considerations in carrying out surveys, it may be appropriate to utilize survey designs in USVI that are different from the design in use at present in Puerto Rico. Separating Puerto Rico and USVI into two separate regions will facilitate development and implementation of regional surveys in the USVI and Puerto Rico that qualify for exempted state designation under § 600.1417.

Objective 4: Clarify and update various sections of 50 CFR 600. The amendments proposed under this objective are as follows:

- Section 600.1400: For ease of making changes to the Definitions section in the future, we proposed to delete the paragraph labels (a) through (j), but retain all of the current definitions. The following definitions will be retained with no change:

“Anadromous species”; “Angler”; “Authorized officer”; “Continental shelf fishery resources”; “Exempted state”; “For-hire fishing vessel”; “Indigenous people”; “Spearfishing”; “State”; “Tidal waters”.

- Section 600.1400: Add a definition of “combination license”. Exempted States submit to NMFS lists of persons who hold any type of state license or registration that permits fishing in tidal waters, including combination licenses that allow the holders to engage in more than one type of fishing or hunting activity, as specified in the individual combination license. Section 600.1416(d)(3) requires Exempted States to identify tidal waters anglers within lists of persons who hold combination licenses. States issue multiple types of hunting and fishing license combination packages that could be construed to fall within this section’s combination license umbrella provision. Many holders of combination licenses may never intend to fish in tidal waters, but purchase such a license that includes saltwater fishing in order to take advantage of combination license pricing discounts that include other activities they do intend to pursue. Lists of license holders that include many persons who do not intend to fish in tidal waters are not efficient for use in survey sampling. However, certain types of combination license holder lists can be effectively used for survey purposes if they are comprised predominantly of persons who fish in tidal waters. This definition identifies the kinds of combination license holder lists for which it is necessary to

identify the tidal waters anglers in order to assure efficient survey use, as required in § 600.1416(d). For combination license packages that include primarily anglers who intend to fish in tidal waters, the entire list of license holders can be used for survey purposes.

- Section 600.1400: Add a definition of “commercial fishing” that is consistent with the definition in §3 of the Magnuson-Stevens Act. This will support the amendment to § 600.1405(b)(7) as described below.

- Section 600.1405(b)(4): Correct the citation for the Pacific HMS permit, holders of which are not required to register their for-hire vessels with NMFS under NSAR.

- Section 600.1405(b)(7): Clarify that the exception to the NSAR registration requirement for licensed commercial fishing vessels is only for commercial fishing and not for for-hire fishing. Some for-hire fishing vessels hold state-issued licenses that authorize commercial fishing and/or that are titled as commercial fishing licenses or permits. The amendment would ensure that such vessels would not be treated as a commercial fishing vessel under this paragraph while conducting for-hire recreational fishing. For-hire fishing vessels engaged in for-hire fishing trips are excepted from the NSAR registration requirement by § 600.1405(b)(4), and (b)(6).

- Section 600.1416(a): Clarify the existing requirement that lists of licensed anglers/registrants submitted by Exempted States need to be updated at least annually.

- Section 600.1416(a): Clarify the requirement that lists of for-hire vessels submitted by Exempted States include vessel names and identifying numbers and vessel owners’/operators’ names, addresses and, to the extent available, telephone numbers and dates of birth. This will clarify that states must submit only name and vessel identification

number for for-hire vessels. Address, telephone number and date of birth are required for vessel owners/operators, not for vessels.

- Section 600.1416(c): Revise the omission of “registration” for consistency with the other references to “license or registration” throughout the rule.
- Section 600.1416(c): Specify that a state may not be designated as an Exempted State if it has any exceptions to state license/registration requirements other than those listed in § 600.1416(b), unless the state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort. The current regulations include a list of unacceptable exceptions, but NMFS cannot predict future exceptions that may be included in State license/registration programs. The proposed rule reinforces the purpose of the NSAR and will clarify that adopting any such exception will render the state ineligible for exempted state designation unless the state can demonstrate that it meets the test provided in § 600.1416(c).
- Section 600.1416(d): Provide an extra year for states that need to enact legislation to remain qualified for Exempted State designation. States have indicated that state legislative cycles are such that there is often a long lead time between the identification of the need for legislation and its introduction and passage by a state legislature. This section allows for an extra year for the state resource agency to develop and enact of necessary legislation.
- Section 600.1416(d)(1): Clarify that states must update registration data for excluded anglers over the age of 59 annually. As with the information for licensed/registered anglers and holders of lifetime licenses, this information must be updated annually to be current and useful for survey sampling purposes.

- Section 600.1416(d)(1): Allow states that do not require persons who were born before June 1, 1940, to be licensed or registered to qualify for Exempted State designations if the state can demonstrate that the number of anglers so excluded is so small that exclusion of this group from a sample will not bias survey results. Some states exclude anglers whose dates of birth are prior to a specified date that assure that the group of excluded anglers is greater than 71 years of age. The size of this age group of anglers is small and will become smaller each year, and a state may be able to demonstrate that exclusion of the group from a sample frame will not bias sample data derived from use of the sample frame.

- Section 600.1417(b)(3): Include mail and internet surveys in the surveys for which registries may be used as sample lists. Mail and internet surveys are likely to be used in addition to or instead of telephone surveys in the future.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The small entities potentially affected by the proposed rule are fishing vessels that carry passengers for a fee to conduct recreational fishing. The proposed amendments to the

rule will not affect the requirements for for-hire fishing vessels to register with NMFS under the NSAR. The proposed amendments will not directly result in any increase in the number of vessels that will be required to register or in the time and cost of registration for those vessels that are currently required to register. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This rule modifies a collection-of-information subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0578. Approval for the modification will be requested from OMB. Public reporting burden for angler registration is estimated to average three minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing this burden to NMFS (see ADDRESSES) and by e-mail to ORIA_Submission@omb.epp.gov , or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Statistics.

Dated: February 1, 2012

Alan D. Risenhoover,

Acting Deputy Assistant Administrator

For Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 to read as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. et seq.

2. Section 600.1400 is revised to read as follows:

§ 600.1400 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings. For purposes of this subpart, if applicable, the terms used in this subpart supersede those used in § 600.10.

Anadromous species means the following:

American shad: Alosa sapidissima

Blueback herring: Alosa aestivalus

Alewife: Alosa pseudoharengus

Hickory shad: Alosa mediocris

Alabama shad: Alosa alabamae

Striped bass: Morone saxatilis

Rainbow smelt: Osmerus mordax

Atlantic salmon: Salmo salar

Chinook, or king, salmon: Oncorhynchus tshawytscha

Coho, or silver, salmon: Oncorhynchus kisutch

Pink salmon: Oncorhynchus gorbuscha

Sockeye salmon: Oncorhynchus nerka

Chum salmon: Oncorhynchus keta

Steelhead: Oncorhynchus mykiss

Coastal cutthroat trout: Oncorhynchus clarki clarki

Eulachon or candlefish: Thaleichthys pacificus

Dolly varden: Salvelinus malma

Sheefish or inconnu: Stenodus leucichthys

Atlantic sturgeon: Acipenser oxyrhynchus oxyrhynchus

Shortnose sturgeon: Acipenser brevirostrum

Gulf sturgeon: Acipenser oxyrhynchus desotoi

White sturgeon: Acipenser transmontanus

Green sturgeon: Acipenser medirostris

Angler means a person who is angling (see 50 CFR 600.10) in tidal waters.

Authorized officer has the same meaning as in 50 CFR 600.10.

Combination license means either:

- (1) A single state fishing license that permits fishing in fresh waters and tidal waters at one price; or
- (2) A single state license that permits a group of fishing and hunting activities, including fishing in tidal waters, at a price that is less than the sum of the cost of the individual licenses.

Commercial fishing has the same meaning as in 16 U.S.C. 1802.

Continental shelf fishery resources has the same meaning as in 16 U.S.C. 1802.

Exempted state means a state that has been designated as an exempted state by NMFS pursuant to § 600.1415.

For-hire fishing vessel means a vessel on which passengers are carried to engage in angling or spear fishing, from whom a consideration is contributed as a condition of such carriage, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person having an interest in the vessel .

Indigenous people means persons who are documented members of a federally recognized tribe or Alaskan Native Corporation or persons who reside in the western Pacific who are descended from the aboriginal people indigenous to the region who conducted commercial or subsistence fishing using traditional fishing methods, including angling.

Spearfishing means fishing for, attempting to fish for, catching or attempting to catch fish in tidal waters by any person with a spear or a powerhead (see 50 CFR 600.10).

State has the same meaning as in 16 U.S.C. 1802.

Tidal waters means waters that lie below mean high water and seaward of the first upstream obstruction or barrier to tidal action and that are subject to the ebb and flow of the astronomical tides under ordinary conditions.

* * * * *

3. In § 600.1405, revise paragraphs (b)(4), (b)(7) and (b)(8) to read as follows:

§ 600.1405 Angler registration.

(b) * * *

(4) Holds a permit issued by NMFS for for-hire fishing under §§ 622.4(a)(1), 635.4(b), 648.4(a), or 660.707(a)(1);

* * * * *

(7) Holds a commercial fishing license or permit issued by NMFS or a state and is lawfully engaged in commercial fishing or in possession of fish taken under the terms and conditions of such license or permit;

(8) Holds an HMS Angling permit under § 635.4(c) or a MHI Non-commercial Bottomfish permit under § 665.203(a)(2);

* * * * *

4. In § 600.1416:

- a. Revise paragraphs (a), (b)(1), (c), introductory text (d) and (d)(1); and
- b. Add paragraph (b)(7) to read as follows:

§ 600.1416 Requirements for exempted state designation based on submission of state license holder data.

(a) A state must annually update and submit to NMFS, in a format consistent with

NMFS guidelines, the name, address and, to the extent available in the state's database, telephone number and date of birth, of all persons and for-hire vessel operators, and the name and state registration number or U.S. Coast Guard documentation number of for-hire vessels that are licensed to fish, or are registered as fishing, in the EEZ, in the tidal waters of the state, or for anadromous species. The Memorandum of Agreement developed in accordance with § 600.1415(b)(2) will specify the timetable for a state to compile and submit complete information telephone numbers and dates of birth for its license holders/registrants. The waters of the state for which such license-holder data must be submitted will be specified in the Memorandum of Agreement.

* * * * *

(b) * * *

(1) Under 17 years of age;

* * * * *

(7) Fishing on days designated as "free fishing days" by states. "Free fishing days" means fishing promotion programs by which states allow new anglers to fish for a specified day without a license.

* * * * *

(c) Unless the state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample, a state may not be designated as an exempted state if its licensing or registration program excludes anglers in any category other than those listed in paragraph (b) of this section.

(d) Required enhancements to exempted state license-holder data. An exempted state must submit the following angler identification data by Jan. 1, 2012, or within two years of the effective date of the Memorandum of Agreement, whichever is later, and thereafter in accordance with the Memorandum of Agreement. States that provide NMFS with notice that they are required to enact legislation to comply with this requirement must submit the data within three years of the effective date of the Memorandum of Agreement:

(1) Name, address and telephone number, updated annually, of excluded anglers over age 59, unless the state can demonstrate that the number of anglers excluded from the license or registration requirement based on having a date of birth before June 1, 1940 is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample;

* * * * *

5. In § 600.1417, revise paragraphs (b)(1)(iii) through (viii), and (b)(3), to read as follows:

§ 600.1417 Requirements for exempted state designation based on submission of recreational survey data.

(b) * * *

(1) * * *

(iii) Puerto Rico;

(iv) U. S. Virgin Islands;

(v) California, Oregon and Washington;

(vi) Alaska;

(vii) Hawaii; or

(viii) American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

* * * * *

(3) Utilize angler registry data to identify individuals to be surveyed by telephone, mail or internet if such regional survey includes a telephone survey component; and

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